

## Message Text

PAGE 01 STATE 166891  
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SUBJECT: OECD MTC SHIPPING POLICY DISCUSSIONS: PHASE II

REF: DAF/MTC/77.19

MISSION IS REQUESTED TO PASS FOLLOWING REPLY FOR PHASE II  
OF SHIPPING POLICY DISCUSSION TO MTC SECRETARIAT:

QUOTE

SHIPPING POLICY DISCUSSIONS: PHASE TWO (UNDERSCORE)

CATEGORIES OF SHIPPING POLICY DIFFICULTIES

UNCLASSIFIED

PAGE 02 STATE 166891

I. DIFFICULTIES RELATED TO DEVELOPING COUNTRIES (UNDER-  
SCORE)

A. UNILATERAL CARGO RESERVATION AND FLAG PREFERENCE.

1. NATIONAL METHODS.(UNDERSCORE)

THE UNITED STATES POSSESSES THREE BASIC NATIONAL METHODS FOR  
DEALING WITH DIFFICULTIES CREATED BY UNILATERAL CARGO  
RESERVATION AND FLAG PREFERENCE, SOME OF WHICH ARE SIMILAR TO

TO METHODS EITHER IN EXISTENCE OR UNDER CONSIDERATION IN OTHER COUNTRIES. THE FOLLOWING ARE THE THREE PRINCIPLE U.S. NATIONAL METHODS:

A) THE MERCHANT MARINE ACT OF 1920. SECTION 19 OF THIS ACT, AS IMPLEMENTED BY FEDERAL MARITIME COMMISSION (FMC) GENERAL ORDER 33, ENABLES U.S. OR THIRD-FLAG CARRIERS OPERATING IN U.S. TRADES TO REQUEST THE U.S. FEDERAL MARITIME COMMISSION (FMC) TO IMPOSE QUOTE COUNTERVAILING MEASURES UNQUOTE ON VESSELS OF NATIONS WHICH DISCRIMINATE AGAINST U.S.-FLAG SHIPS OR THE SHIPS OF THIRD COUNTRIES OPERATING IN U.S. TRADES. THESE COUNTERVAILING MEASURES HAVE ON OCCASION CONSISTED OF EQUALIZATION FEES IMPOSED ON CARGOES CARRIED ON THE VESSELS OF THOSE NATIONS BUT OTHER TYPES OF COUNTERVAILING MEASURES ARE ALSO POSSIBLE. THE FMC MAY ALSO INITIATE SECTION 19 ACTION EVEN IN THE ABSENCE OF COMPLAINTS FROM SHIPPING LINES IF IT BELIEVES THE SITUATION IN ANY U.S. TRADE WARRANTS SUCH ACTION.

THE PRINCIPAL DISADVANTAGE OF THE SECTION 19 METHOD IS THAT IMPLEMENTATION ACTION INVOLVES THE PUBLICATION OF PROPOSED COUNTERVAILING MEASURES. SUCH PUBLICATION, WITH ITS ATTENDANT PUBLICITY, TENDS TO ENCOURAGE BILATERAL UNCLASSIFIED

PAGE 03 STATE 166891

CONFRONTATIONS AND MAY IN TURN MAKE NEGOTIATION OF SOLUTIONS MORE DIFFICULT AND ACRIMONIOUS. IMPLEMENTATION OF SECTION 19 ACTION ALSO REQUIRES FIRM LEGAL EVIDENCE OF DISCRIMINATORY POLICIES, WHICH MAY IN CERTAIN SITUATIONS BE DIFFICULT TO OBTAIN.

B) PUBLIC RESOLUTION 17. THIS RESOLUTION REQUIRES THAT ALL CARGOES FINANCED BY THE UNITED STATES EXPORT-IMPORT BANK (A GOVERNMENT ENTITY) MUST BE CARRIED IN U.S.-FLAG VESSELS, EXCEPT THAT THE U.S. MARITIME ADMINISTRATION MAY GRANT QUOTE GENERAL WAIVERS UNQUOTE ALLOWING THE RECIPIENT COUNTRY'S VESSELS TO CARRY UP TO 50 PERCENT OF THE CARGO WHEN THE MARITIME ADMINISTRATION IS SATISFIED THAT THE RECIPIENT GOVERNMENT PROVIDES QUOTE FAIR AND EQUITABLE TREATMENT UNQUOTE FOR U.S.-FLAG SHIPPING. SINCE THESE GENERAL WAIVERS ARE ROUTINELY GRANTED, THEIR DENIAL OR WITHDRAWAL CAN BE AN EFFECTIVE METHOD OF COUNTERING DISCRIMINATORY PRACTICES OF OTHER GOVERNMENTS.

THE DENIAL OR REVOCATION OF PUBLIC RESOLUTION 17 WAIVERS IS THE MOST FLEXIBLE METHOD OF COUNTERING DISCRIMINATION, WHERE IT IS APPLICABLE. WAIVERS CAN BE GRANTED, DENIED OR REVOKED WITHOUT PUBLICITY, ALLOWING SOLUTIONS TO BE SOUGHT IN A LOW-KEY ATMOSPHERE; THE PUBLIC CONFRONTATION WHICH SECTION 19 ACTION CAN STIMULATE CAN OFTEN BE AVOIDED. IN ADDITION, PUBLIC RESOLUTION 17 WAIVERS CAN BE DENIED OR REVOKED WITHOUT EXTENSIVE LEGAL PROCEEDINGS

AND IN SITUATIONS WHERE THERE IS CLEAR DISCRIMINATION BUT WHERE THE DOCUMENTARY EVIDENCE MIGHT NOT BE SUFFICIENT TO INITIATE SECTION 19 ACTION. THE PRINCIPAL DISADVANTAGE OF THIS METHOD IS THAT IT IS EFFECTIVE ONLY IN BILATERAL TRADES WITH THOSE COUNTRIES WHICH RECEIVE SUBSTANTIAL EXPORT-IMPORT BANK CREDITS.

C) THE TRADE ACT OF 1974. SECTION 301 OF THIS ACT PROVIDES THAT QUOTE WHENEVER THE PRESIDENT DETERMINES THAT UNCLASSIFIED

PAGE 04 STATE 166891

A FOREIGN COUNTRY OR INSTRUMENTALITY ... ENGAGES IN DISCRIMINATORY OR OTHER ACTS OR POLICIES WHICH BURDEN OR RESTRICT U.S. COMMERCE (BRACKET) DEFINED TO INCLUDE SERVICES (BRACKET),... HE SHALL TAKE ALL APPROPRIATE AND FEASIBLE STEPS WITHIN HIS POWER TO OBTAIN THE ELIMINATION OF SUCH RESTRICTIONS UNQUOTE. THESE STEPS MAY INCLUDE THE IMPOSITION OF DUTIES OR OTHER IMPORT RESTRICTIONS ON THE PRODUCTS OF THE DISCRIMINATING FOREIGN COUNTRY OR INSTRUMENTALITY. ANY SHIPPING LINE WHICH WISHED TO HAVE SECTION 301 OF THE TRADE ACT OF 1974 INVOKED WOULD HAVE TO FILE A COMPLAINT WITH THE PRESIDENT'S SPECIAL TRADE REPRESENTATIVE.

SINCE THIS PARTICULAR METHOD IS OF RECENT ORIGIN AND HAS BEEN INVOKED ONLY ONCE(BUT NEVER ACTUALLY USED) IN A SHIPPING DISCRIMINATION CASE, ITS ADVANTAGES AND DISADVANTAGES CANNOT BE EVALUATED WITH ANY CERTAINTY. HOWEVER, ACTION UNDER SECTION 301 OF THE TRADE ACT INVOLVES PUBLICATION OF PROPOSED ACTION AND, IN MOST CASES, PUBLIC HEARINGS; HENCE, IT IS LIKELY THAT ITS DISADVANTAGES WOULD BE SIMILAR TO THOSE OF SECTION 19 ACTION UNDER THE MERCHANT MARINE ACT OF 1920 (SEE ABOVE).

## 2. BILATERAL METHODS (UNDERScore)

THE PRINCIPAL BILATERAL METHOD OF COUNTERING SHIPPING DISCRIMINATION WHICH THE U.S. USES IS GENERAL DIPLOMATIC REPRESENTATIONS. THESE REPRESENTATIONS ARE DIFFICULT TO CHARACTERIZE WITH ANY PRECISION, SINCE THEY MUST BE TAILORED TO THE SITUATION AT HAND. IN GENERAL, HOWEVER, THE U.S. HAND IN SUCH REPRESENTATION IS STRENGTHENED BY THE EXISTENCE OF THE NATIONAL MEASURES OUTLINED ABOVE, AND OTHER ECONOMIC AND POLITICAL FACTORS ARE ALSO DRAWN UNCLASSIFIED

PAGE 05 STATE 166891

UPON AS APPROPRIATE IN SUCH REPRESENTATIONS.

THE MAJOR STRUCTURED BILATERAL METHOD THE UNITED STATES GOVERNMENT USES TO ENSURE NON-DISCRIMINATORY TREATMENT OF

ITS SHIPPING LINES IS INVOCATION OF THE MORE THAN THIRTY TREATIES OF FRIENDSHIP, COMMERCE AND NAVIGATION (FCN) WITH PROVISIONS RELATING TO SHIPPING IN FORCE BETWEEN THE U.S. AND A VARIETY OF OTHER COUNTRIES (BOTH DEVELOPING AND DEVELOPED). MOST OF THESE TREATIES PROVIDE FOR MOST-FAVORED-NATION AND/OR NATIONAL TREATMENT BY EACH PARTNER OF THE OTHER'S VESSELS. IN NUMEROUS CASES, THESE TREATIES HAVE PROVIDED USEFUL BASES FOR DIPLOMATIC REPRESENTATIONS AGAINST DISCRIMINATORY MEASURES; FOR EXAMPLE, THE EXISTENCE OF AN FCN TREATY WITH THE REPUBLIC OF KOREA RESULTED IN ASSURANCES THAT CARGO RESERVATION MEASURES UNDER CONSIDERATION BY THAT GOVERNMENT WOULD NOT APPLY TO U.S.-FLAG VESSELS.

THE PRINCIPLE DISADVANTAGES OF INVOKING FCN TREATIES ARE THAT THEY ARE, OF COURSE, APPLICABLE ONLY IN TRADES WITH THOSE COUNTRIES WHICH ARE PARTIES TO SUCH TREATIES WITH THE U.S., AND THAT SOME OF THESE TREATIES ARE NOT PHRASED SUFFICIENTLY TIGHTLY TO RULE OUT ALL FORMS OF DISCRIMINATION.

### 3. MULTILATERAL METHODS (UNDERScore)

THE UNITED STATES IS NOT A MEMBER OF ANY ORGANIZATION (SUCH AS THE CONSULTATIVE SHIPPING GROUP) OR PARTY TO ANY MULTILATERAL AGREEMENT WHICH POSSESSES FORMAL MECHANISMS FOR REACTING TO DISCRIMINATORY SHIPPING MEASURES. THE U.S. DOES BELIEVE, HOWEVER, THAT CONSULTATIONS WITHIN SUCH ORGANIZATIONS AS THE OECD MARITIME TRANSPORT COMMITTEE CAN BE USEFUL IN DEVELOPING COMMON APPROACHES TO PROBLEMS RESULTING FROM CARGO RESERVATION MEASURES. IN ADDITION, INFORMAL CONSULTATIONS AMONG INTERESTED OECD

UNCLASSIFIED

PAGE 06 STATE 166891

MEMBER GOVERNMENTS HAVE ON OCCASION PROVED USEFUL IN DEALING WITH PARTICULAR SITUATIONS. FOR INSTANCE, CONSULTATIONS AMONG INTERESTED MEMBERS OF THE CONSULTATIVE SHIPPING GROUP AND THE UNITED STATES AND COORDINATION OF DIPLOMATIC APPROACHES WERE, WE BELIEVE, HELPFUL IN BRINGING ABOUT THE WITHDRAWAL OF PRESIDENTIAL DECREE 667 IN THE PHILIPPINES. SIMILARLY, CONSULTATIONS WITHIN THE CSG AND THE QUOTE TURKISH CONSORTIUM UNQUOTE AND COORDINATION AMONG THE EMBASSIES CONCERNED IN ANKARA WAS HELPFUL IN BRINGING ABOUT THE CANCELLATION OF TURKISH CARGO PREFERENCE MEASURES IN 1975.

THE PRINCIPAL DISADVANTAGE OF COORDINATION WITHIN SUCH MULTILATERAL FORA AS THE CSG IS THE AMOUNT OF TIME REQUIRED TO DEVELOP A CONSENSUS AMONG THE MEMBERS ON ACTIONS TO BE TAKEN, OR REPRESENTATIONS TO BE MADE.

### B. BILATERAL DIVISION AND ALLOCATION OF CARGO

1. BILATERAL ARRANGEMENTS IN U.S. TRADE WITH DEVELOPING COUNTRIES.

THE U.S. GOVERNMENT HAS GIVEN ITS APPROVAL TO EQUAL ACCESS AND POOLING ARRANGEMENTS IN A LIMITED NUMBER OF CASES IN THE U.S. TRADES WITH LATIN AMERICA. THESE AGREEMENTS WERE APPROVED BECAUSE NO OTHER ARRANGEMENT SEEMED LIKELY TO RESOLVE THE PROBLEMS U.S. OPERATORS WERE EXPERIENCING IN THOSE PARTICULAR TRADES. IN SEVERAL VERY RECENT DECISIONS, HOWEVER, THE FMC HAS INDICATED IT MAY NO LONGER FOLLOW THIS COURSE OF ACTION.

2. BILATERAL DIVISION AND ALLOCATION OF CARGO IN THIRD-COUNTRY TRADES.

UNCLASSIFIED

PAGE 07 STATE 166891

SINCE CROSS-TRADING HAS GENERALLY BEEN RELATIVELY UNIMPORTANT TO U.S. SHIPPING LINES, THE UNITED STATES HAS NOT DEVELOPED A RANGE OF METHODS FOR DEALING WITH DISCRIMINATION AGAINST CROSS-TRADING COMPARABLE TO THOSE IT HAS DEVELOPED TO COUNTER DISCRIMINATION IN U.S. BILATERAL TRADES. THE UNITED STATES IS, HOWEVER, BECOMING INCREASINGLY CONCERNED, PARTICULARLY IN LATIN AMERICA, BY AGREEMENTS BETWEEN DEVELOPING COUNTRIES WHICH ELIMINATE THIRD-FLAG CARRIERS FROM THEIR BILATERAL TRADES. THE U.S. GOVERNMENT CURRENTLY HAS THE MATTER UNDER STUDY BUT HAS NOT YET REACHED ANY CONCLUSIONS ON HOW BEST TO DEAL WITH IT.

C. FREIGHT RATE FIXING ON A UNILATERAL BASIS. TO DATE, THE UNITED STATES HAS NOT EXPERIENCED SIGNIFICANT DIFFICULTIES RESULTING FROM SUCH UNILATERAL FIXING OF FREIGHT RATES.

II. DIFFICULTIES RELATED TO STATE TRADING COUNTRIES (UNDERScore)

D. IN BILATERAL TRADES.

1. NATIONAL MEASURES (UNDERScore)

THE THREE NATIONAL MEASURES LISTED ABOVE, WHICH THE U.S. GOVERNMENT HAS FOUND EFFECTIVE IN DEALING WITH DISCRIMINATORY MEASURES ENACTED BY DEVELOPING COUNTRIES, HAVE SELDOM BEEN USED TO DEAL WITH PROBLEMS POSED BY THE SHIPPING POLICIES OF STATE TRADING COUNTRIES, LARGELY BECAUSE IN THOSE COUNTRIES THE GOVERNMENT IS THE SHIPPER OR VIRTUALLY ALL CARGOES. IN ONE CASE, DENIAL OF PUBLIC RESOLUTION 17 WAIVERS WAS USED, APPARENTLY TO SOME EFFECT, TO COUNTER CERTAIN DISCRIMINATORY INCENTIVES PROVIDED BY THE AUTHORITIES OF A STATE TRADING COUNTRY TO ITS FLAG

OPERATORS.  
UNCLASSIFIED

PAGE 08 STATE 166891

2. BILATERAL METHODS. (UNDERScore)

ASIDE FROM THE RELATIVELY MINOR DIFFICULTIES IN THE ONE CASE NOTED ABOVE, THE PRINCIPAL DIFFICULTIES WHICH THE U.S. HAS EXPERIENCED IN BILATERAL TRADES WITH STATE TRADING COUNTRIES HAVE BEEN WITH THE SOVIET UNION. IN THIS CASE THE UNITED STATES FOUND IT NECESSARY TO RESOLVE THESE DIFFICULTIES THROUGH A BILATERAL U.S.-USSR MARITIME AGREEMENT.

THE AGREEMENT HAS PROVED EFFECTIVE IN RESOLVING THE MARITIME PROBLEMS BETWEEN THE TWO COUNTRIES, BUT ENSURING SOVIET COMPLIANCE REQUIRES DIFFICULT AND PROTRACTED NEGOTIATIONS. THE UNITED STATES EXPERIENCE WITH THIS AGREEMENT INDICATES THAT BILATERAL MARITIME AGREEMENTS WITH THE SOVIET UNION MUST BE VERY SPECIFIC. SEVERE PROBLEMS OF IMPLEMENTATION ARE LIKELY TO ARISE IN THE CASE OF ANY AGREEMENT WHICH IS NOT SUFFICIENTLY SPECIFIC AND DETAILED, SINCE IT CAN BE EXPECTED THAT THERE WILL BE CONTINUAL TESTING BY THE SOVIETS AND AN ONGOING ATTEMPT TO BROADEN AND GENERALIZE (AND HENCE WEAKEN) THE AGREEMENT. UNDER THE U.S.-USSR MARITIME AGREEMENT THERE IS EFFECTIVE ANNUAL ACCOUNTING BY TONNAGE AND VALUE IN THE BILATERAL TRADES, WHICH PERMITS THE NECESSARY CONTINUAL MONITORING OF THE AGREEMENT.

E. THIRD-COUNTRY TRADES.

TO DATE, THE DIFFICULTIES RELATED TO STATE TRADING COUNTRIES WHICH THE UNITED STATES HAS EXPERIENCED IN THIRD-COUNTRY TRADES HAVE BEEN ALMOST ENTIRELY WITH THE SOVIET UNION. THE MANNER IN WHICH SOVIET CARRIERS SET UNCLASSIFIED

PAGE 09 STATE 166891

FREIGHT RATES HAS CAUSED CONSIDERABLE CONCERN IN THE U.S. ADMINISTRATION, CONGRESS AND SHIPPING INDUSTRY. THIS CONCERN HAS ARISEN ALMOST ENTIRELY FROM THE ACTIVITIES OF THE SOVIET MERCHANT FLEET, RATHER THAN FROM THE FLEETS OF OTHER STATE TRADING COUNTRIES.

1. NATIONAL MEASURES. (UNDERScore)

THE NATIONAL MEASURES DESCRIBED IN I(A)(1) ABOVE HAVE NOT BEEN USED TO COUNTER PROBLEMS POSED BY STATE TRADING COUNTRY OPERATIONS IN THIRD-COUNTRY TRADES WITH THE U.S. PR 17 WAIVERS ARE APPLICABLE ONLY TO BILATERAL TRADES, AND ACTION HAS NEVER BEEN BROUGHT UNDER EITHER SECTION 19

OF THE MERCHANT MARINE ACT OF 1920 OR SECTION 301 OF THE TRADE ACT OF 1974. THERE HAS, HOWEVER, BEEN ACTIVE CONSIDERATION IN RECENT YEARS OF DOMESTIC LEGISLATION DIRECTED AGAINST PREDATORY RATE CUTTING. SUCH LEGISLATION IS DIFFICULT TO DESIGN IN SUCH A WAY THAT IT WILL IMPACT ONLY ON THE INTENDED CARRIERS. TWO BILLS, H.R.7025 AND H.R.7026, HAVE BEEN INTRODUCED IN THE PRESENT CONGRESS AND ARE DUPLICATIONS OF QUOTE THIRD-FLAG UNQUOTE BILLS WHICH WERE INTRODUCED IN A PREVIOUS CONGRESS. LIKE THE EARLIER BILLS, THESE RECENTLY INTRODUCED BILLS POSE CERTAIN FOREIGN POLICY PROBLEMS. IT IS POSSIBLE, HOWEVER, THAT LEGISLATION CAN BE DEvised WHICH WILL CONTROL RATE CUTTING PRACTICES OF THE SOVIET AND OTHER STATE TRADING FLEETS WHILE NEVERTHELESS PROTECTING U.S. TREATY PARTNERS AND TRADITIONAL MARKET ECONOMY OPERATORS. BARRING A SIGNIFICANT CHANGE IN SOVIET PRACTICES, SUCH LEGISLATION IS LIKELY TO RECEIVE SERIOUS STUDY IN THE COMING MONTHS.

## 2. BILATERAL METHODS. (UNDERScore)

OUTSIDE OF GENERAL DIPLOMATIC DISCUSSIONS, THE ONLY FORMAL BILATERAL ATTEMPT TO DEAL WITH SOVIET RATE PRACTICES AND THIRD-COUNTRY TRADES WAS THE AGREEMENT NEGOTIATED IN UNCLASSIFIED

PAGE 10 STATE 166891

JULY 1976 BY THE CHAIRMAN OF THE U.S. FEDERAL MARITIME COMMISSION WITH A HIGH OFFICIAL OF THE SOVIET MINISTRY OF THE MERCHANT FLEET. THIS AGREEMENT, KNOWN AS THE

--

QUOTE LENINGRAD AGREEMENT UNQUOTE, PLEDGED BOTH BODIES TO USE THEIR GOOD OFFICES TO BRING CERTAIN SOVIET-FLAG CARRIERS INTO SHIPPING CONFERENCES AND TO RAISE THE RATES OF SOVIET INDEPENDENT OPERATORS TO THE LEVEL OF THOSE OF THE LOWEST RESPONSIBLE INDEPENDENT OPERATOR IN THE TRADE. FOR A VARIETY OF REASONS, IMPLEMENTATION OF THIS AGREEMENT HAS PROCEEDED SLOWLY AND UNEVENLY, RAISING QUESTIONS AS TO WHETHER THE TYPES OF PROBLEMS INVOLVED CAN BE SOLVED THROUGH SUCH BILATERAL ARRANGEMENTS. FOR THAT REASON, THE TYPE OF LEGISLATION DESCRIBED ABOVE HAS RECEIVED RENEWED CONSIDERATION.

## 3. MULTILATERAL/INTERNATIONAL METHODS. (UNDERScore)

THE UNITED STATES IS AWARE OF NO DIRECT MULTILATERAL OR INTERNATIONAL METHODS FOR DEALING WITH DIFFICULTIES RELATED TO STATE TRADING COUNTRIES. THE UNITED STATES DOES, HOWEVER, BELIEVE THAT CONSULTATIONS WITHIN THE OECD MARITIME TRANSPORT COMMITTEE, AND POSSIBLY OTHER BODIES, CAN PLAY A USEFUL ROLE IN COORDINATING STRATEGIES VIS-A-VIS THESE PROBLEMS AND EXCHANGING IDEAS.

## III. DIFFICULTIES RELATED TO FLAG OF CONVENIENCE

COUNTRIES (UNDERScore)

AS NOTED IN OUR SUBMISSION TO PHASE I, THE UNITED STATES HAS NOT EXPERIENCED SIGNIFICANT POLICY DISPUTES WITH OPEN REGISTRY COUNTRIES. THE UNITED STATES GOVERNMENT'S PRINCIPAL CONCERN WITH OPEN REGISTRY COUNTRIES IS THE UNCLASSIFIED

PAGE 11 STATE 166891

EFFECT THAT THEIR FLEETS HAVE ON THE SIZE AND COMPOSITION OF THE U.S. MERCHANT FLEET; ALMOST ONE-HALF OF THE VESSELS OWNED BY U.S. CITIZENS ARE NOT REGISTERED UNDER THE U.S.-FLAG AND IN PARTICULAR A LARGE PROPORTION OF OIL AND BULK CARRIERS OWNED BY U.S. CITIZENS ARE UNDER THE REGISTRY OF SUCH COUNTRIES. THE UNITED STATES GOVERNMENT BELIEVES THAT SUCH CONCERNS CAN BE BEST ADDRESSED THROUGH NATIONAL LEGISLATION.

IV. OTHER DIFFICULTIES (UNDERScore)

THE PRINCIPAL DIFFICULTIES WHICH THE UNITED STATES HAS EXPERIENCED IN INTERNATIONAL SHIPPING ARE COVERED UNDER THE THREE ABOVE CATEGORIES. VANCE

UNCLASSIFIED

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